92-263

O.D. Page, P.E. *Professional Engineers & Consultants*

7536 Spring Lake Drive, Bethesda, MD 20817 (301) 469-6688

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SEP. 7 1993

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Ms. Donna Searcy
Secretary
The Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Retransmission Consent Repercussions

Dear Ms. Searcy:

Enclosed is a copy of my letter of August 31, 1993, which has been distributed to each of the Commissioners individually. This is in case this is an *ex parte* contact in this matter, although I understand the Rule is already in place.

Very truly yours,

O. D. Page, P.E.

ODP/pg

Encs

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August 31, 1993

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The Federal Communications Commissioners
1919 M Street, NW
Washington, DC 20554

Commissioners: The Honorable Reed Hundt, Nominee/Chairman
The Honorable James H. Quello
The Honorable Sherrie P. Marshall
The Honorable Andrew C. Barrett
The Honorable Ervin S. Duggan

Subject: Retransmission Consent Repercussion

I think each of you should be interested in the piece that showed up in the *Franklin County News-Post* in the State of Virginia recently (Attachment 1). It says that WDBJ (Channel 7 Washington) is going to demand *57¢ per subscriber* from each and every one of some 17 Cable Operators in the general area of Roanoke and Rocky Mount (e.g., Franklin and Roanoke Counties).

It seems to me that there is more than one such station imported into that area from Washington, and this one station alone, at a basic cost of 57¢ for programming, is surely going to justify a rate increase of $1 *per subscriber for one channel*, if the Cable Operators are foolish enough to pay it.

If anything like the same scenario happens with three more, for example, the *increase* in per-subscriber-per-month rates might run to $4??? I don't think the rates are going to be reduced that much by the Cable Act, particularly when we look at the fact that the cable-subscriber rates that are being regulated amount to something of the order of 1% to 10% of the total, but this atrocious 57¢ applies to *all tiers*; no rate regulation here. To get anything done about rate pricing on higher tiers, it is necessary to petition the Federal Communications Commission, which I'm sure you will agree will result in quite a bit of paper work for your staff to take care of.

The broadcasting people continue to be very effective in their lobbying efforts in the Washington, D.C. area; that point is quite clear. The Cable Operators aren't putting up cash, fortunately, so far (despite Senator Inouye). (Even CBS now shows signs that they are going to get by without cash).

Here we have a station that believes it can get by with charging more than most of the so-called "Cable Stations". I believe Home Team Sports is a little higher, something like $1 per month per subscriber, but stations like CNN, and so on, will run 25¢ to 30¢ (the last time I looked).

These "Cable Stations" derive *all* of their income from cable; *they have no off-air customers.* In general, about half of the broadcasters' circulation in their home market is *direct* to listeners who are not cable subscribers, and many more subscribers can receive them off-air *if necessary.* Please note that "Cable Networks" do not have this privilege. (Super stations like WTDS, WOR, etc. pay satellite-transmission charges.)

Further, it is my understanding that the broadcasters have their feet in the trough already, thanks to Mr. Jack Valenti and a few others and their effect in Washington in terms of copyright payments — so-called "Mandatory Copyright" — which have been going up over the years as these things always do.

We now mention the *additional revenues that accrue to the broadcasters for advertising* by virtue of the fact that they have a certain circulation, according to Arbitron and Neilson, for example, ***and*** the increased circulation and increase in advertising rates and revenues caused by the fact that Cable Companies increase their circulation outside of their areas by quite some significant numbers. That's <u>triple-dipping so far</u>.

Television Stations have long ago mastered the art of manipulating the Federal Communications Commission and sometimes the Congress to get what they want. All they have to do is yell "unfair" (not exactly an unusual expression in this Country these days), and somebody runs to help them.

Who is subsidizing the Cable Networks? Who is trying to force Cable Operators to carry any of these *other* networks? And note that these Cable Networks do not have a separate viewer constituency and clientele, as do the broadcasters' (*once again dear hearts*, note that about *half* of the broadcasters' circulation is <u>not through Cable</u>, simply because cable penetration is of the order of about 50%).

My advice to all of my clients is to intensely encourage Cable Operators to drop these stations with their outlandish charges and stop them cold from doing this nice little piece of FFC-and-Congress-supported graft. (By the way, I understand that the broadcast stations are still "crying all the way to the bank".)

In other words, if the subscribers are told what will happen to their rates as a result of these ridiculous and unfounded charges by the broadcasters, don't you think there is a good chance that they will decide for themselves that it is just not worth it? This is particularly the case in areas where the residents can get some kind of off-air service. I do sincerely hope that the facts also get to subscribers — it'll be fun to see the results,

Cox Cable Roanoke alone would be paying WDBJ nearly $356,000 a year. Now Honorable Commissioners, where do you suppose that money is coming from? So much for the "benefits" of "rate regulation", which started out as a good idea but *became watered down* by the powerful and rich special interests in our city of Washington, D.C., and as usual, the *citizen* loses.

I wonder if this station will be the "Multi-Vision" of the 1992 Cable Act??

Also enclosed is a copy of a letter to one of my clients (Attachment 2), also copied to a Cable Operator.

The number one conclusion here is simple: I recommend that no Cable Operator pay any broadcaster *one cent* for retransmission consent. If Broadcasters charge extra, then all of the work of the Congress and the FCC to hold down cable rates will have been lost to the broadcasters through their "entitlement trough".

I'm also suggesting that elected and politically-appointed officials treat this one as a *hot potato*.

Finally, I enclose a copy of a piece from the August 16, 1993 issue, Page 1, of *MultiChannel News* (Attachment 3), about the good "deal-making" Senator Inouye — and I rest my case.

Any kind of response would be appreciated, but unexpected.

Very truly yours,

O. D. Page, P.E.

ODP/pg

Attachments: (1) *Franklin County News-Post* article "WDBJ-TV..."; (2) copy of client letter (Rocky Mount, VA); (3) *Multichannel News* piece dated August 16, 1993 "Inouye to Cable..."

cc: Ms. Donna Searcy
Mr. John Wong
Cable TV Labs, Inc.
NCTA
Scientific Atlanta
EIA
National Association of Broadcasters
Senator Inouye

WDBJ-TV to charge for signal

Cable systems must pay to retransmit

By JOEL TURNER
STAFF WRITER

Roanoke television station WDBJ may be dropped by some cable television systems in Western Virginia because the station will start charging cable operators for retransmitting its programs.

Robert Lee, president and general manager of Channel 7, said Wednesday that the station will begin charging 17 cable systems 57 cents per subscriber per month.

Lee said he expects to reach agreements with Cox Cable Roanoke and Salem Cable, the companies serving the Roanoke Valley, so there will be no changes in the Roanoke metropolitan area.

But he told the Regional Cable Television Committee that some cable systems, including the one in Lynchburg, may not agree to the charge.

Under the 1992 Cable Act, cable operators must obtain the permission of television stations to retransmit their programs, including newscasts.

Until now, cable companies didn't have to pay local television stations for their programs or get their permission.

Television stations long have contended that this was unfair because cable systems have to pay for all other programming, such as ESPN, Discovery, USA, CNBC or HBO.

The law requiring cable companies to get permission to use local stations' programming will take effect Oct. 6.

Cox Cable Roanoke, which has 52,000 customers in Roanoke, Vinton and Roanoke County, will have to pay WDBJ nearly $356,000 a year.

O.D. Page, P.E. *Professional Engineers & Affiliates*

7536 Spring Lake Drive, Bethesda, MD 20817 (301) 469-6688

August 8, 1993

Mr. Mark Henne, Town Manager
Town of Rocky Mount
PO Box 239
220 Donald Avenue
Rocky Mount, VA 24151

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Subject: WDBJ-TV Charges

Dear Mark:

Thanks for sending the piece from the July 30 paper. I see WDBJ is charging 57¢ per subscriber per month. That is absolutely atrocious!

Regardless of what broadcast people are trying to thrust off on the public, the plain truth of the matter is that the Commission has allowed them to put their feet into the trough for the third time. The first of course has to do with the large amounts of money collected for advertising from their broadcast operations, including extension of services by cable. The second time they had their feet in the same trough was a copyright fee for material which has already being paid for by the advertiser. Now, for the third time, they have landed a juicy deal out of the FCC which allows a higher charge for a standard off-air broadcast station than is charged for most other standard cable-tier satellite signals.

Some of the satellite programs do have advertising, but some don't, e.g., C-Span.

I am suggesting to anyone who wants to listen that, rather than pay this atrocious amount of money (any amount of money for that matter), the Cable Operator just simply remove the signal from the Cable System and drop in something else from satellite — this would, in all probability, be less expensive than 57¢ per month per subscriber; most satellite networks don't charge that amount of money.

I am suggesting that the Cable Company and the Town get together and make suitable announcements to the effect that what is being asked by these broadcasters is absolutely unreasonable, and the objective here is not to pass on this rip-off to the subscribers.

If you want to discuss this further, please let me know. I am providing a copy of this letter to Steve Hattrup to let him know what I think our position should be on this. Obviously it's going to be up to Rifkin to decide how much they are going to pay. I'm afraid that this amount of increase just for one station is certainly going to cause an increase in subscriber fees, and with markups and overhead, etc., I can see this added cost relating into a $1 per month increase to the cable subscribers — so much for "rate reduction"!

Best regards,

ODPage

O. D. Page, P.E.

ODP/pg

cc: Mr. Steve Hattrup w/enc

PAGE 1

Multichannel News August 16, 1993

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Inouye to Cable: Why No Cash?

DEALMAKING HITS FEVERISH PACE

By RACHEL W. THOMPSON

Cable executives vehemently denied charges of collusion on retransmission consent raised in a letter from Sen. Daniel K. Inouye (D-Hawaii), the Cable Act's leading proponent, to top MSO executives that surfaced first in last Monday's *The Wall Street Journal.*

Also last week, Capital Cities/ABC Inc. and Hearst Corp. announced retransmission consent agreements with five more MSOs, giving them four of the top 10 MSOs and close to 5.5 million more potential subscribers.

In a letter to a handful of the largest MSOs, including Tele-Communications Inc., Time Warner Inc. and Continental Cablevision Inc., Inouye said he had noted "the tactical and semantic uniformity" of the companies' statements to the effect that they would not pay cash for retransmission consent.

Inouye said he would be "very interested in your explanation as to how you arrived at your 'no-cash' decision," and said "this question may well be the subject of Communications subcommittee hearings at the earliest opportunity."

Inouye said he had asked the Department of Justice and the Federal Trade Commission to

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look into the companies' "parallel" behavior which, he said, was fine, if coincidental, but "something quite different if the similarities result from factors other than chance."

Cable executives, while scrambling to answer the charges, immediately pointed a finger at CBS, whose chairman Lawrence Tisch was spotted on Capitol Hill the day before the letter was sent out. And Inouye's office said they did not know who had released the letter, dated Friday, Aug. 6, to the *Journal.*

Continental Cablevision chairman Amos Hostetter wrote back to Inouye on Aug. 11, saying he wanted to "state unequivocally that Continental Cablevision's position regarding retransmission payments was arrived at independently and without consultation with any other cable television company or entity."

The company attached a sheaf of statements made by Hostetter going back to 1990 in which he argued against any pay-for-carriage policy.

"Despite insinuations by some broadcasters (most notably CBS) that the unwillingness of many cable operators to pay cash" suggested collusion, Continental's and others' insistence on non-cash agreements "simply reflects the economic reality" of the marketplace.

Spokespersons for Time Warner and TCI also said they planned to quickly answer Inouye's letter but had not yet done so.

Tisch did visit Inouye's office on Thursday, but CBS vice president Marty Franks insists they were there to discuss the financial interest and syndication rules, and not retransmission consent. "We saw Inouye. And when we walked into his office he told us about the letter he sent," Franks said.

Community Antenna Television Association president Steve Effros said Inouye should not be surprised by cable's position. "This is not collusion; this is fairness," he said.

Some cable industry executives have been saying privately for some time now that they believe CBS might bring antitrust charges against the industry if it cannot get what it wants in negotiations.

"The market's starting to work out there," Franks said. "The key question is to what extent the no-cash stance of the top MSOs is a negotiating stance meant to drive the price down" and to what extent it is "a religion."

Independent operators CBS has reached agreements with all insist on confidentiality, he said, and so it would appear they fear retribution. "They're scared of somebody. I assume it's not the Internal Revenue Service," he said.

CBS senior vice president Jay Kriegel wouldn't comment on whether the network would consider bringing antitrust charges if its negotiations with cable MSOs prove unfruitful.

In the meantime, ABC, the broadcast network that showed the least enthusiasm for retransmission consent, is quickly preparing to launch ESPN2 with the widest distribution at launch of any network since CNBC's launch in 1989.

The MSOs that signed up last week to carry ESPN2 are: Comcast Cable Communications, Cablevision Industries, Prime Cable, Viacom Cable and Helicon Corporation. The six-year agreements allow them to carry the signals of CapCities/ABC- and Hearst-owned broadcast stations in their markets.

"I think it's a win, win, win," said ESPN president Steve Bornstein, "and that's why it's working." Bornstein denied rumors that ESPN pricing is in any way involved in negotiations for carriage of ESPN2.

"In some circumstances we're extending our ESPN agreements, but there's no relationship between the price of ESPN and the price of ESPN2," he said.

Comcast president Brian L. Roberts said in a statement, "We think ESPN2 is an exciting new approach to sports programming."

and praised the broadcasters for bringing "constructive and creative ideas to the negotiating table."

This was Comcast's first announced retransmission agreement.

On other fronts, broadcaster Tribune Co. is expected to announce this week its deal to acquire a stake in startup cable service TV Food Network. Tribune is buying a piece of the network from The Providence Journal Co. to use in its retransmission consent negotiations, seeking distribution of TVFN on cable systems in exchange for permission to carry the signals of the broadcasters' six independent TV stations.

Sources said that the deal was formally signed last Thursday and includes equity investments by seven other MSOs. All the equity participants will receive additional stock in exchange for distribution of the network.

However, a source said a system carrying TVFN as part of a retransmission consent agreement with Tribune will not get credit for those subscribers. Equity for that distribution will go to Tribune.

Whether and when to seek carriage extensions is an issue that many cable companies are now considering.

Tele-Communications Inc. announced weeks ago that it did not believe it would be possible to wrap up all of its negotiations before the October deadline. TCI spokeswoman Lela Cocoros last week said, "We are encouraging extensions and in some cases have already been granted some."

Continental Cablevision senior vice president of programming Robert Stengel said, "I don't believe in most cases it's going to be necessary for us to seek extensions or for broadcasters to seek extensions." Continental won't seek or agree to extensions "just to duck the issue."

The pace of agreements "is really picking up," Stengel said.

In other retransmission consent news:

- Chronicle Publishing Co.-owned NBC affiliate KRON-TV in San Francisco said it is pursuing the concept of a 24-hour news and information channel as part of its talks with Bay Area cable companies. Officials of KRON's sister cable company, Western Communications, declined comment.
- Warner Cable-Milwaukee and an NBC affiliate related to The Milwaukee Journal & Sentinel reached a retransmission consent deal based on "mutually beneficial programming and promotional consideration items." No further details were announced.
- A Springfield, Mo. CBS affiliate which TeleCable Corp. had threatened to banish to channel 32 on the dial from channel 9 announced last Friday that the companies had reached an agreement under which the station, known as KOLR-10, will stay where it is. Terms of the deal will remain confidential.

Overall, TeleCable Corp. executive vice president Gordon Herring said, "We're doing very well ... and we feel very confident that we'll have the vast majority of them locked up within the appropriate time, and all on a non-cash basis."

TeleCable entered an agreement with Dallas/Fort Worth CBS affiliate KDFW-TV for carriage of a new, local cable channel that was arrived at in June with TCI. Sammons also signed up with KDFW last week, KDFW said.

John M. Higgins contributed to this report.